STATE OF ALASKA

IBLA 90-452 Decided October 4, 1993

Appeal from a decision of the Alaska State Office, Bureau of Land Management, accepting amendment of Native allotment application AA-7602.

Appeal dismissed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments

A BLM decision to accept a revised Native allotment application covering lands previously conveyed out of Federal ownership lacked finality and consequently was not an appealable action.

APPEARANCES: John T. Baker, Esq., Office of the Attorney General, State of Alaska, Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The State of Alaska has appealed from a June 12, 1990, decision by the Alaska State Office, Bureau of Land Management (BLM), to accept an amended description for Native allotment application AA-7602, an allotment that the State had recommended be rejected. The June 12, 1990, decision was limited to an "acceptance" of an amended land description and did not "speak to the validity of the Native allotment claim," thereby avoiding questions of use and occupancy that a decision on the merits would have required. See Decision at 2.

On April 13, 1972, the Bureau of Indian Affairs filed Native allotment application AA-7602 and evidence of use and occupancy on behalf of Mickey R. Balashoff, Jr. On the application, the legal description of the land sought was given as the "NE 1/4 sec. 29, T. 7 S., R. 12 W., SM, Seldovia C 4, [a]s shown on the attached portion of USGS quadrangle map as indicted above which becomes a part of this application." An included Geological Survey quadrangle map fragment shows a tract marked "1" in the NE¼ of sec. 29. The same map also shows an area labelled "2" in the NE¼ of sec. 35, T. 7 S., R. 13 W., Seward Meridian. On July 27, 1979, two BLM officials, accompanied by Balashoff, conducted a field examination of his claim. The report of their examination, dated December 19, 1980, recites that:

> Mr. Balashoff stated during the examination that his allotment had been incorrectly plotted. He refused to go to the area originally described in his application. The original description is located on a stream flowing from Wosnesenski Glacier and terminating downstream into China Poot Bay. It is described as being in Sec. 29, T. 7 S., R. 12 W., Seward Meridian, NW¼. The parcel the applicant claimed during the examination is located approximately one mile east on Stonehocker Creek. It is described as being in Secs. 21, 22, 27 and 28, T. 7 S., R. 12 W., Seward Meridian.

The surface estate of secs. 21, 22 (excluding U.S. Survey 3606), 27, and 28, however, was conveyed to Seldovia Native Corporation by Interim Conveyance No. 139, dated December 6, 1979. The surface of the lands now said to comprise the "corrected" Balashoff allotment were therefore included in the conveyance to Seldovia. Ownership of the subsurface estate in the subject lands was first transferred to Cook Inlet Region, Inc., and then to the State. The United States therefore no longer holds any interest in the real property claimed by Balashoff in his amended application.

On April 3, 1986, BLM notified the State that Balashoff had filed an amended description of the allotment he sought. By letter of April 14, 1986, the State objected that the amended description amounted to a new application, and now argues that there is no evidence tending to show that Balashoff's original application did not correctly describe the land he intended to claim. The State contends that a hearing is necessary to ascertain Balashoff's original intent, and complains that BLM's failure to issue "a consolidated decision, dealing with location as well as compliance with the use and occupancy requirements" has left the State in an awkward position to defend its interests in the land. The State opposes a BLM motion to dismiss this appeal as premature, contending that to do so would cause inefficient administration of the allotment claim. See State Response filed August 30, 1993, at 2, 3.

[1] The BLM motion to dismiss filed on July 26, 1993, relies on our decision in Bay View, Inc., 126 IBLA 281 (1993) for the proposition that an application for relocation of an allotment on lands that have previously been transferred into private ownership lacks finality, and that no appeal lies from such action. See id. at 126 IBLA 287-88. The BLM motion is well taken: the Bay View decision cannot reasonably be distinguished from the instant case, and is clearly controlling here. In Bay View, as here, the land that the Native allotment claimant sought by an amended application had earlier been conveyed out of Federal ownership. The Bay View opinion found that an appeal from a decision under such circumstances "to accept the revised allotment description is properly dismissed as premature." Id. at 126 IBLA 288. That holding is controlling here. Although the State argues that our decision in Bay View should be overruled in the interest of efficient administration, we decline to do so, and we adhere to our ruling in Bay View.

Consequently, we grant the BLM motion to dismiss this appeal, finding that the acceptance by BLM of the amended allotment claim, where the lands sought by the claimant had previously been conveyed into private ownership, lacked finality. An appeal from such a preliminary action to this Board was therefore premature under the circumstances.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is dismissed.

Franklin D. Arness
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge